

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

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UNITED STATES OF AMERICA, :  
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 :  
vs. : Case No. 1:10-cr-395  
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ZACHARY A. CHESSER, :  
 :  
Defendant. :  
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PLEA HEARING

October 20, 2010

Before: Liam O'Grady, USDC Judge

APPEARANCES:

Gordon D. Kromberg, Thomas H. McQuillan, and John T. Gibbs,  
Counsel for the United States

Michael S. Nachmanoff, Counsel for the Defendant

The Defendant, Zachary A. Chesser, in person

1 THE CLERK: Criminal case number 1:10-cr-395, the  
2 United States of America versus Zachary Adam Chessser.

3 MR. KROMBERG: Good afternoon, Your Honor. Gordon  
4 Kromberg, Tom McQuillan, and John Gibbs for the United States.  
5 John Gibbs is a trial attorney with the United States  
6 Department of Justice.

7 Also with us are the case agents, FBI Special Agent  
8 Paula Menges and United States Secret Service Special Agent  
9 Sean Kirgan.

10 THE COURT: All right. Good afternoon to you all.

11 MR. NACHMANOFF: Good afternoon, Your Honor.  
12 Michael Nachmanoff on behalf of Mr. Chessser, who is present.

13 THE COURT: All right. Good afternoon, Mr.  
14 Nachmanoff.

15 Good afternoon, Mr. Chessser.

16 This comes on for a plea. Are the parties ready to  
17 proceed?

18 MR. KROMBERG: Yes, Your Honor.

19 MR. NACHMANOFF: We are, Your Honor.

20 MR. KROMBERG: The documents that we have handed up  
21 today are identical to the ones that were delivered to your  
22 chambers earlier, except for two typographical errors in the  
23 criminal information. Page 6, the caption has been changed to  
24 reflect the actual description of the charge.

25 And on page 13, the words "grand jury" were deleted

1 in the reference to soliciting others to commit a crime. The  
2 words "soliciting others unknown to the grand jury" were  
3 deleted. But the rest is identical, Judge.

4 THE COURT: All right, thank you. I appreciate  
5 getting the courtesy copy.

6 Let's swear Mr. Chesser, please.

7 NOTE: The defendant duly affirms.

8 THE COURT: All right. Good afternoon, Mr. Chesser.  
9 How old are you, sir?

10 THE DEFENDANT: I am 20 years old.

11 THE COURT: All right. How far did you go in  
12 school?

13 THE DEFENDANT: Through my freshman year of college.

14 THE COURT: All right. And you were born and raised  
15 in the United States, sir, and English is your primary  
16 language?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Have you told Mr. Nachmanoff  
19 everything about this case so that he could represent you to  
20 the best of his ability?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And has he been able to answer any  
23 questions you had about the various documents which we are  
24 going to go over in a few minutes?

25 THE DEFENDANT: Yes, sir.

1           THE COURT: All right. And are you fully satisfied  
2 with Mr. Nachmanoff's services?

3           THE DEFENDANT: Yes, sir.

4           THE COURT: All right. Has anyone made any threats  
5 or promises that aren't in this agreement to get you to plead  
6 guilty here today?

7           THE DEFENDANT: No, sir.

8           THE COURT: All right. And are you prepared to  
9 plead guilty to the three-count information because you are in  
10 fact guilty of each of those counts?

11          THE DEFENDANT: Yes, sir.

12          THE COURT: All right. Have you had sufficient time  
13 to discuss the agreement, and the statement of facts, and the  
14 waiver of indictment with your counsel, Mr. Nachmanoff?

15          THE DEFENDANT: Yes, sir.

16          THE COURT: All right. Let's go to the waiver of  
17 indictment first. Do you understand that you have a right to  
18 have a grand jury consider the charges against you?

19          THE DEFENDANT: Yes, sir.

20          THE COURT: And the grand jury is made up of  
21 two-dozen members of our community. They would have to hear  
22 evidence from a witness who would be under oath and subject to  
23 review by them. They would have to find that there was  
24 probable cause to believe that you've committed each of these  
25 offenses before -- a majority of the members of the grand jury

1 would have to find that there was probable cause before you  
2 would be indicted on any of these charges.

3 Do you understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And do you understand you have a right  
6 to waive your right to have the grand jury consider the  
7 charges against you and instead proceed by criminal  
8 information?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And you have agreed to do that after  
11 consulting with Mr. Nachmanoff in this case, sir?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. I find that you've knowingly  
14 and voluntarily waived your right to grand jury consideration,  
15 and we will proceed by criminal information.

16 Do you understand that you have a right to plead not  
17 guilty to each of these charges and be tried on those not  
18 guilty pleas if you wish?

19 THE DEFENDANT: Yes, sir, I understand.

20 THE COURT: And do you understand that if there was  
21 a trial, a jury could be impaneled, it would be made up of 12  
22 members of our community; and before you could be found guilty  
23 of any of these charges, the jury would have to unanimously  
24 agree that the Government had proven its case beyond a  
25 reasonable doubt?

1 Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand that if there was a  
4 trial, the Government would have to call witnesses? They  
5 would be placed under oath. They would be subject to  
6 cross-examination by your counsel. You would have a right to  
7 contest the evidence the Government sought to admit against  
8 you. You would have a right to use the power of the court to  
9 compel witnesses to attend and testify in any trial. You  
10 would have a right to testify yourself if you wished in any  
11 trial, and an absolute right not to testify if you didn't wish  
12 to. And no inference could be made by the trier of fact  
13 because you failed to testify in your own behalf.

14 Do you understand those rights?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And of course, you would have a right to  
17 have counsel present representing you at all stages of a  
18 criminal proceeding. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand that if I accept your  
21 pleas of guilty as to Count 1, the communicating threats in  
22 violation of Title 18, Section 875(c), the maximum term of  
23 imprisonment is five years?

24 And Count 2, the soliciting others to engage in  
25 conduct constituting a felony that has as an element the

1 threatened use of physical force against another in violation  
2 of Title 18, Section 373, the maximum term of imprisonment is  
3 ten years.

4 And as to the third count in the criminal  
5 information, attempting to provide material support to a  
6 designated terrorist organization in violation of Title 18,  
7 Section 2339(b), the maximum term of imprisonment is 15 years.

8 In each of those offenses there is also a fine of up  
9 to \$250,000, restitution, a special assessment, and three  
10 years of supervised release.

11 Do you understand those are the maximum penalties?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And that they could be run  
14 consecutively. Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And do you understand that supervised  
17 release is a period of probation which begins after you've  
18 been released from any term of incarceration? If you violated  
19 the conditions of your supervised release, you could be sent  
20 back to the penitentiary for the full number of years of  
21 supervised release.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Do you understand that you  
24 won't be sentenced today, that the case will be continued for  
25 a presentence report by the Probation Office, and that at this

1 time there is no certainty and complete uncertainty as to what  
2 sentence may be imposed?

3 Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand that I will look at  
6 the factors in Title 18, Section 3553, which include the  
7 nature of this offense, your personal history, matters of  
8 deterrence?

9 And also a Sentencing Guideline calculation, which  
10 is not mandatory but can be considered by the Court. And that  
11 only after that report has been prepared and I've considered  
12 those other factors, we may have disagreements between counsel  
13 and the Probation Office report and the Guideline calculation,  
14 all those matters won't be resolved until your day of  
15 sentencing.

16 Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. And knowing the uncertainty  
19 of what sentence you might receive, you have agreed to waive  
20 your right to appeal your convictions of these three counts of  
21 the criminal information and also any sentence that I impose  
22 as long as it is a lawful sentence?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that you have also  
25 agreed in paragraph 4 of the agreement that the United States



1 and you and your counsel agree that at least Count 3 of the  
2 information is a felony that involved and was intended to  
3 promote a federal crime of terrorism?

4 Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. The agreement further  
7 provides you with immunity from further prosecution in this  
8 district for the offenses of which you are charged, with the  
9 exception of any crime of violence that the Government is  
10 presently aware of.

11 Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And you have agreed, in consideration of  
14 that agreement not to prosecute you further for these events,  
15 to at sentencing not request a sentence below 240 months of  
16 incarceration?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Also, as part of the  
19 agreement between yourself and the Government, the Government  
20 has agreed not to criminally prosecute your wife, if I  
21 pronounce it incorrectly, I apologize, Ms. Nzabanita, for the  
22 conspiring, or aiding and abetting the commission of the  
23 information counts, as long as she pleads guilty to making  
24 false statements in violation in Title 18, Section 1001, or  
25 other suitable felony to be agreed upon within the next 60

1 days.

2 Is that correct, sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. You have agreed to cooperate  
5 fully and truthfully with the United States.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand that means what it  
8 says? That means that you will be questioned by law  
9 enforcement personnel. That you may have to testify in grand  
10 juries. You may have to testify at trials. The information  
11 that you provide may be checked for its accuracy. You may be  
12 required to undergo a polygraph examination. It means just  
13 what it says, truthfully and completely.

14 Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand that if you are found  
17 not to have cooperated fully and truthfully, that the  
18 Government would be allowed to withdraw its part of the  
19 agreement that you've reached, but you would not be allowed to  
20 withdraw your pleas of guilty given here today?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. Do you understand that the  
23 Government has agreed not to use any truthful information  
24 which you provide in furtherance of any prosecution against  
25 you?

1           That does not provide you with immunity from another  
2 district investigating separately and also obtaining the  
3 information that you have provided in an effort to prosecute  
4 you in another jurisdiction.

5           THE DEFENDANT: Yes, sir, I understand.

6           THE COURT: All right. And do you understand that  
7 if that happens, the Government will bring to the attention of  
8 the other jurisdiction the nature and extent of your  
9 cooperation and the fact that you have voluntarily pled guilty  
10 here today?

11          THE DEFENDANT: Yes, sir.

12          THE COURT: All right. Have you gone over the  
13 criminal information carefully?

14          THE DEFENDANT: Yes, sir.

15          THE COURT: So you understand that in Count 1,  
16 communicating threats in violation of Title 18, United States  
17 Code 2261(a) --

18          MR. KROMBERG: I am sorry, Judge, I am sorry for  
19 interrupting, but that was the typo that was corrected, and it  
20 should say 18 U.S.C. 875(c).

21          THE COURT: You are right, thank you.

22                You understand more particularly that in that  
23 charge, that the information charges that between April 15 of  
24 2010 and July 21 of 2010, in the Eastern District of Virginia,  
25 and elsewhere, you knowingly and unlawfully transmitted in

1 interstate and foreign commerce communications by Internet  
2 postings containing threats to injure other persons, including  
3 TP and MS and another individual described as JG in connection  
4 with the broadcast of an episode of South Park, and JG's  
5 participation in a group on Facebook?

6 Do you understand those are the elements of the  
7 offenses charged in Count 1 of the information?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And you have gone over the facts  
10 necessary to prove you guilty of Count 1 of the criminal  
11 information with your counsel?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. And have you gone over the  
14 manner and means which is laid out in the criminal information  
15 as well as repeated in the statement of facts with your  
16 counsel?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And do you disagree with any of the  
19 statements made and agreed upon in the statement of facts that  
20 are in the criminal information?

21 THE DEFENDANT: I agree with all of those statements  
22 in the criminal information.

23 THE COURT: All right. And you went over each of  
24 them carefully, including the manner and means of the  
25 distribution of the threatening communications?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. And I won't go over all of  
3 them, but do you agree that you developed or used Web sites,  
4 including revolutionmuslim.com and the mujahidblog.com Web  
5 sites to transmit statements and photos and clips asserting  
6 that the South Park episode insulted Muhammad, and that the  
7 persons responsible were in grave danger and should be paid a  
8 visit by members of the Muslim community in retribution?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. And also, that during that  
11 period of time you used a YouTube Web site to transmit videos,  
12 including the Defense of the Prophet Campaign, and that you  
13 narrated that video?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. And you agree that the  
16 contents included photographs of those you felt were  
17 responsible for insulting Muhammad and other information about  
18 them?

19 THE DEFENDANT: Excluding JG, yes, sir.

20 THE COURT: Okay. Do you also agree that in or  
21 around May 17 of 2010, that you obtained the contact  
22 information for at least nine individuals on Facebook who had  
23 joined The Everybody Draw Muhammad Day Group and transmitted  
24 that information out?

25 THE DEFENDANT: Yes, sir.

1           THE COURT: Okay. And do you agree that in looking  
2 at the information that you put out on those Web sites, and  
3 the nature of that information, that it objectively  
4 constituted messages to an audience that likely included  
5 individuals around the world who were inclined to engage in  
6 violent jihad against what they believed to be the enemies of  
7 Islam?

8           THE DEFENDANT: Yes, sir.

9           THE COURT: And also that you understood the  
10 messages to constitute requests to attack MS, TP, and JG?

11          THE DEFENDANT: Yes, sir.

12          THE COURT: And that could potentially -- those  
13 persons were capable of attacking MS and TP and JG in response  
14 to those messages?

15          THE DEFENDANT: Yes, sir.

16          THE COURT: How do you plead then to Count 1 of the  
17 criminal information which charges you with a violation of  
18 Title 18, Section 875(c), guilty or not guilty, sir?

19          THE DEFENDANT: Guilty, Your Honor.

20          THE COURT: All right. Let's move on to Count 2,  
21 which charges you with soliciting others to engage in violent  
22 or threatening felony conduct.

23               Did you go over the elements of that offense, Title  
24 373, with counsel and the proof necessary before you would be  
25 found guilty of that charge, sir?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. And in particular, that you  
3 urged others to leave suspicious packages that looked like  
4 package bombs in public places that were otherwise harmless to  
5 desensitize the public and law enforcement authorities to the  
6 threat of actual package bombs in violation of Title 18,  
7 U.S.C., 1992 and 1038?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. And did you go over the  
10 manner and means in Count 2 of the criminal information, the  
11 seven paragraphs which discuss different postings that you  
12 made between June and July of 2010 in the Eastern District of  
13 Virginia and elsewhere?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And are each of those manner and means  
16 accurate?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. So, again, without going  
19 over each and every one of them, that in January you posted a  
20 link on the Mujahideenblog.com, the entire the United States  
21 Transportation Security Administration manual, which in  
22 particular set forth the operating procedures used at airports  
23 for screening and inspecting individuals and property and  
24 baggage at those airports; is that correct?

25 THE DEFENDANT: Yes, sir.

1           THE COURT: And that in June you posted on the Al  
2 Fallujah Islamic Forums Web site a link titled 200 Plus Books  
3 on Various Beneficial Subjects, which you describe as books on  
4 jihad, Islam, and warfare?

5           THE DEFENDANT: Yes, sir.

6           THE COURT: All right. And that in paragraph 7,  
7 that on or about June 15 of 2007 you posted a message on the  
8 Al Fallujah Islamic Forums again the information Desensitizing  
9 Federal Agents and conducting fake operations by leaving  
10 suspicious packages at different locations, and you ended the  
11 message posted with the words "Boom! No More Kuffar"; is that  
12 right, sir?

13          THE DEFENDANT: Yes, sir.

14          THE COURT: All right. How do you plead then to  
15 Count 2 of the criminal information which charges you with a  
16 violation of Title 18, Section 373, guilty or not guilty, sir?

17          THE DEFENDANT: Guilty, sir.

18          THE COURT: All right. In looking at Count 3, which  
19 charges you with material support to a designated terrorist  
20 organization in violation of Title 18, Section 2339(b), it  
21 states that in between July 10 -- beginning on a date unknown  
22 and continuing through July 10, 2010, in the Eastern District  
23 of Virginia and elsewhere, that you knowingly and unlawfully  
24 provided and attempted to provide material support and  
25 resources both individually and through recruitment of others



1 to a terrorist organization, namely al-Shabaab, in that you  
2 attempted to travel to Somalia to fight for and at the  
3 direction of al-Shabaab, and posted material related to  
4 violent jihad and its tactics on the Internet for and at the  
5 instruction of al-Shabaab.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And you went over the elements of that  
8 offense necessary for you to be found guilty of that offense  
9 with your counsel?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And there follows a series of paragraphs  
12 which constitute the manner and means of carrying out that  
13 offense.

14 Did you go over those carefully with your counsel?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And do you agree, as they are also  
17 listed in the statement of facts, that you in fact committed  
18 each and every one of those acts in furtherance of a violation  
19 of Count 3?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. And in particular, in  
22 November you planned -- November 2009, as it states in  
23 paragraph 3, you attempted to leave the United States and  
24 travel to Somalia for the purpose of joining al-Shabaab and  
25 engaging in violent jihad, but ultimately you had to postpone

1 that trip; is that correct?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And that you thereafter posted on  
4 another Web site a series of messages concerning the Somalian  
5 attacks by al-Shabaab during May of 2010; is that correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. And that you then again made  
8 preparations to leave the United States and travel to Somalia  
9 to join al-Shabaab and engage in violent jihad in July of  
10 2010, and got as far as John F. Kennedy International Airport  
11 in New York on that attempt?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. How do you plead then to  
14 Count 3 of the criminal information which charges you with a  
15 violation of Title 18, Section 2339(b), guilty or not guilty?

16 THE DEFENDANT: Guilty.

17 THE COURT: All right. Mr. Nachmanoff, have you  
18 gone over the facts of the case with Mr. Chesser?

19 MR. NACHMANOFF: I have, Your Honor.

20 THE COURT: And also gotten discovery from the  
21 Government on each of the allegations made in the criminal  
22 information and statement of facts?

23 MR. NACHMANOFF: Yes, Your Honor.

24 THE COURT: Do you believe that Mr. Chesser's pleas  
25 this afternoon are knowingly and voluntarily made?

1 MR. NACHMANOFF: I do.

2 THE COURT: And that there is a basis in fact for  
3 each one of them?

4 MR. NACHMANOFF: Yes.

5 THE COURT: All right. Thank you. Based on the  
6 plea agreement, and the statement of facts, and the answers to  
7 my questions by Mr. Chesser, and those of counsel, Mr.  
8 Nachmanoff, I will find Mr. Chesser guilty of each of the  
9 counts in the criminal information.

10 I will continue this matter for sentencing. I will  
11 order a presentence report.

12 I think we ought to go into January. Does  
13 January 14 work for counsel?

14 MR. NACHMANOFF: It does, Your Honor. It might be  
15 worth setting it a little bit later just given the nature of  
16 this case and the amount of work that will have to go into the  
17 presentence report. We could set it for that time and then  
18 see whether it needs to be pushed back, or perhaps pick a date  
19 in February if that's more convenient.

20 THE COURT: Well, why don't we go to the end of  
21 January then. How about the 28th of January?

22 MR. KROMBERG: That would be fine, Judge.

23 MR. NACHMANOFF: I apologize, Your Honor, I think I  
24 am out of town that week.

25 THE COURT: Okay.

1 MR. KROMBERG: Judge, if I could say, I did want to  
2 approach the bench on a matter with Mr. Nachmanoff that might  
3 make it easier to pick a date, if that's possible.

4 THE COURT: Certainly.

5 MR. NACHMANOFF: And before we do that, there is  
6 only one other matter I want to place on the record. Which is  
7 that these documents contain the entire agreement amongst  
8 parties.

9 There is one thing that is not in the written plea  
10 agreement that is an agreement between the parties which I  
11 wanted the Court to be aware of. Which is that the Government  
12 has agreed not to seek or to request that Mr. Chesser be sent  
13 to a Super Max facility, which would include Florence, and  
14 will not object or oppose a recommendation by the defense for  
15 a BOP designation.

16 Of course, we all acknowledge that ultimately the  
17 Bureau of Prisons will make its own determination as to  
18 classification and designation. But I wanted to be clear that  
19 that was something that had been discussed between the  
20 parties.

21 MR. KROMBERG: That's correct, Judge.

22 THE COURT: All right. I can understand why.

23 All right, please --

24 MR. KROMBERG: Can we approach?

25 THE COURT: -- approach the bench.

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1           NOTE: The under seal side-bar discussion is  
2 concluded; whereupon the hearing continues as follows:

3           THE COURT: All right. How about February 25 at  
4 9:00 a.m. for sentencing?

5           MR. KROMBERG: That's fine, Judge.

6           MR. NACHMANOFF: That's fine, Your Honor, thank you.

7           THE COURT: All right. Then this matter is  
8 continued to February 25 at 9 a.m. for sentencing. As I  
9 indicated, a presentence report will be ordered.

10          And Mr. Chesser is remanded until that time.

11          MR. NACHMANOFF: Thank you.

12          MR. KROMBERG: Thank you, Judge.

13          THE COURT: All right, thank you. All right, we are  
14 going to take a brief recess and then take up our 3 o'clock  
15 docket.

16          Thank you, counsel.

17          MR. NACHMANOFF: Thank you.

18          -----  
19                           HEARING CONCLUDED

20  
21                           I certify that the foregoing is a true and  
22 accurate transcription of my stenographic notes.

23  
24   /s/ Norman B. Linnell  
25   Norman B. Linnell, RPR, CM, VCE, FCRR